

IN THE MATTER OF:)
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North Dakota State Board of Medical)
Examiners - Investigative Panel B,)
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Complainant,)
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- vs-)
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)
Tommathew T. Thomas, M.D.)
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Respondent.)

On February 24, 2003, a Complaint was filed with the North Dakota Board of Medical Examiners ("Board") by John M. Olson, special assistant attorney general, on behalf of the Board's Investigative Panel B requesting administrative action against the license to practice medicine in North Dakota of Tommathew T. Thomas, M.D. ("Thomas"). The Complaint cites as grounds for administrative action violation of N.D.C.C. § 43-17-31(25) because Thomas has had disciplinary action taken against him in the state of Montana.

On June 24, 2003, the Board requested the designation of an administrative law judge (ALJ) from the Office of Administrative Hearings to conduct a hearing and to issue recommended findings of fact and conclusions of law, as well as a recommended order, in regard to the Complaint. On June 30, 2003, the undersigned ALJ was designated.

On July 8, 2003, the ALJ issued a Notice of Hearing. The Notice of Hearing was served by certified mail upon Thomas at the address he provided to the Board in regard to his licensure in North Dakota. The Notice was received at that address on July 10, 2003.

The hearing was held as scheduled on September 11, 2003, in the Office of Administrative Hearings, Bismarck, North Dakota. Investigative Panel B was represented by Mr. Olson. He called one witness, the Board's executive secretary and treasurer, Mr. Rolf P. Sletten. The Respondent was not present at the hearing. The Respondent was not represented by counsel or anyone else at the hearing. One exhibit was offered and admitted. The exhibit is documentation for Montana administrative proceedings against Thomas and includes a Notice of Proposed Board Action and Opportunity for Hearing (December 2000), Notice of Proposed Board Action and Opportunity for Hearing (April 2003), Order Granting Continuance (June 2002), Stipulation (May 2002), Request for Entry of Default (May 2003), Final Order (July 2002). All the documents admitted as part of exhibit 1 are certified copies of official Montana records.

Based on the evidence presented at the hearing, the administrative law judge makes the following recommended findings of fact and conclusions of law.

FINDINGS OF FACT

1. Thomas is not currently licensed to practice medicine in North Dakota but could become so licensed again. He could still renew his previous license.
2. Thomas was previously licensed by the Board to practice medicine in North Dakota, license number 5274. He first became licensed in North Dakota on March 25, 1994. He last renewed his North Dakota license in June 2001.
3. Disciplinary action has been taken in Montana against Thomas by the Montana Board of Medical Examiners ("Montana Board"), Department of Labor and Industry ("Department"). On December 15, 2000, counsel for the Department issued a Notice of Proposed Board Action and Opportunity for Hearing regarding Thomas, alleging violations of Montana

law (Docket # CC-01-188-MED). The document was actually, formally served on Thomas on August 16, 2002. On May 22, 2002, Thomas and the Montana Board's counsel entered into a Stipulation in regard to the December 2000 matter by which Thomas and the Montana Board's counsel agreed that Thomas's license would be placed on probation for a period of two years. After Thomas failed to attend a telephonic conference for the Montana Board to consider the Stipulation, the Montana Board issued an Order Granting Continuance on June 19, 2002. Based on the Stipulation, the Montana Board entered a Final Order in the matter on July 27, 2002, placing Thomas's Montana medical license on probation for a period of two years from the date of the order. On April 3, 2003, counsel for the Department served Thomas in regard to another matter alleging violations of Montana law (Docket No. CC-03-0252-MED). See Notice of Proposed Board Action and Opportunity for Hearing dated April 3, 2003. On May 9, 2003, counsel for the Department filed with the Montana Board a Request for Entry of Default. This second action is, apparently, still pending.

4. The grounds for the disciplinary action taken against Thomas in Montana when Thomas's Montana license was placed on probation for two years would constitute grounds for disciplinary action against Thomas in North Dakota under N.D.C.C. § 43-17-31. See December 2000 Notice of Proposed Board Action and Opportunity for Hearing (Docket # CC-01-188-MED).

CONCLUSIONS OF LAW

1. Although Thomas is not currently licensed by the Board to practice medicine in North Dakota, he may still renew his previous license to practice medicine in North Dakota, # 5274. See N.D.C.C. § 43-17-26.1.

2. Under N.D.C.C. § 43-17-31(25), it is grounds for disciplinary action by the Board if another state has imposed disciplinary action against the physician upon acts or conduct by the physician that would constitute grounds for disciplinary action as set forth in N.D.C.C. § 43-17-31.

3. The State of Montana, Board of Medical Examiners, Department of Labor and Industry, has imposed disciplinary action against Thomas for conduct by Thomas that would constitute grounds for disciplinary action as set forth in N.D.C.C. § 43-17-31.

4. The Board has authority to take a variety of means of disciplinary action against Thomas under N.D.C.C. § 43-17-30.1 as the result of the grounds for disciplinary action under N.D.C.C. § 43-17-31 proven at the hearing.

5. The Board has authority in a disciplinary proceeding in which disciplinary action is imposed against a physician to direct the physician to pay to the Board a sum not to exceed the reasonable and actual cost, including reasonable attorney's fees, incurred by the Board and its investigative panels in the investigation and prosecution of the case. N.D.C.C. § 43-17-31.1.

RECOMMENDED ORDER

The greater weight of the evidence shows that there is grounds for disciplinary action against Thomas under N.D.C.C. § 43-17-31(25), such that disciplinary action may be taken against Thomas under N.D.C.C. § 43-17-31. At the hearing, the Board's executive secretary and treasurer recommended leaving to the Board the actual imposition of disciplinary action against Thomas. The ALJ recommends that the Board take disciplinary action against Thomas by one or more of the means stated in N.D.C.C. § 43-17-30.1. Further the ALJ recommends that the Board order Thomas to pay to the Board a sum not to exceed the reasonable and actual costs, including

reasonable attorney's fees, incurred by the Board and its Investigative Panel B in the investigation and prosecution of the case.

Dated at Bismarck, North Dakota, this 19th day of September, 2003.

State of North Dakota
Board of Medical Examiners

By: _____
Allen C. Hoberg
Administrative Law Judge
Office of Administrative Hearings
1707 North 9th Street
Bismarck, North Dakota 58501-1882
Telephone: (701) 328-3260